IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 18723 of 2004

Between:

1 D. Uma Maheshwara Rao,

S/o. Suryanarayana,
A.P. Eastern Power Districution Company Ltd.,

Visakhapatnam, R/o. Visakhapatnam.
2 S. Ramakrishna,

S/o. Varahalu,
A.P. Eastern Power Distribution Company Ltd.,

Visakhapatnam,

R/o. Visakhapatnam.
3 K. Prasada Rao,

S/o. Viswanadham,
A.P. Eastern Power Distribution Company Ltd.,

Visakhapatnam, R/o. Visakhapatnam.
4 K. Kanaka Raju,

S/o. Chitti,
A.P. Eastern Power Distribution Company Ltd.,

Visakhapatnam,

R/o. Visakhapatnam.
5 B. Laxmana Rao,

S/o. Late Ramapathi Rao,
A.P. Eastern Power Distribution Company Ltd.,

Visakhapatnam,

R/o. Visakhapatnam.
6 S. Narasinga Rao,

S/o. Satyam,
A.P. Eastern Power Distribution Company Ltd.,

Visakhapatnam,

R/o. Visakhapatnam.
7 V.V.S. Chandra Sekhar,

S/o. V. Subba Rao,
A.P. Eastern Power Distribution Company Ltd.,

Visakhapatnam,

R/o. Visakhapatnam.
8 Ch. S.V.V. Prasada Rao,

S/o. Ananta Rao,
A.P. Eastern Power Distribution Company Ltd.,

Visakhapatnam,

R/o. Visakhapatnam.
9 D. Ramesh,

S/o. Seetharambabu,
A.P. Eastern Power Distribution Company Ltd.,

Visakhapatnam,

R/o. Visakhapatnam.
10 A.V. Rama Rao,

S/o. Rambabu,
A.P. Eastern Power Distribution Company Ltd.,

Visakhapatnam,

R/o. Visakhapatnam.

..... PETITIONERS

AND

1 The A.P. Eastern Power Distribution Company Ltd.,

rep., by its Chairman & Managing Director,
Opp. Saraswati Park,

Visakhapatnam.
2 The Superintending Engineer, Operation Circle,

A.P. Eastern Power Distribution Company Ltd.,
Opp. Green Park Hotel,

Visakhapatnam.
3 The Divisional Electrical Engineer,

A.P. Eastern Power Distribution Company Ltd.,
Operation Zone-1 Opp. Green Part Hotel,

Visakhapatnam.
4 The Divisional Electrical Engineer,

AP Eastern Power Distribution Company Ltd.,
Operation Zone-II, Kancharapalem,

Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue an order or direction more particularly one in the nature of Writ of Mandamus; a) Declare the action of the respondents in rejecting the case of the petitioners vide Memo No. CGM/HRD/Disc. Cases/POII/F.No.59/01/D.No.1851/04 to 1860/04 Dt.29.9.2004 as arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India; b) Declare that the petitioners are entitled to be reinstated into service on par with 11 other employees who ha been reinstated into service vide proceedings dt. 28.7.2004 against whom criminal case as well as departmental proceedings were pending; c) Direct the respondents to reinstate the petitioners into service forthwith on par with 11 others persons who had been reinstated into service vide proceedings dt. 28.7.2004.

Counsel for the Petitioners: Mr. NUTY RAM MOHAN RAO
Counsel for the Respondents: Mr. M.V.SUBBA RAO

The Court made the following ORDER:

The petitioners are working with the 1st respondent-company. The 2nd respondent gave a complaint against the petitioners and others to the police alleging misappropriation of amounts and a crime covered by Cr.No.171 of 2004 was registered by the concerned police for the offence punishable under Sections 409, 418, 420, 477 (A) r/w Section 120 (B) of the Indian Penal Code. The police after investigation laid a charge sheet and it was numbered as C.C.No.427 of 2002 on the file of the concerned Magistrate in September, 2002. On 14-6-2001 petitioners 1 and 10 were kept under suspension, on 9-7-2001 petitioners 2 and 3 were kept under suspension, on 27-7-2001 4th petitioner was kept under suspension, on 26-6-2001 petitioners 5 to 7 were kept under suspension, on

1-5-2001 9th petitioner was kept under suspension and their suspension orders have not been reviewed till now.

The respondents on account of the pressure brought by the Andhra Pradesh State Electricity Board employees' Union reinstated some of the employees against whom the criminal case and departmental proceedings are pending. The 1st petitioner and two others filed W.P.No.17531 of 2002 questioning the initiation of departmental action and the criminal case, and the said Writ Petition is pending. The 1st petitioner also filed W.P.No.14121 of 2001 questioning the action of the respondents in placing him under suspension. This Court was pleased to dispose of the writ Petition on 12-7-2001 directing the respondents to conduct the departmental enquiries expeditiously. But the respondents did not issue any charge sheet till January, 2003 and ultimately, issued a charge memo basing upon the charge sheet in the criminal case. The charges in the criminal case and the departmental proceedings are one and the same and the list of witnesses and material are also one and the same. Therefore, the 1st petitioner and others filed W.P.No.8173 of 2003 wherein this Court stayed the departmental enquiry initially by observing that the departmental enquiry and the criminal case cannot be conducted simultaneously, where the charges in both the cases are identical and one and the same. The respondents reinstated eleven employees vide proceedings dated 28-7-2004 against whom the criminal case as well as departmental proceedings are pending. The petitioners contented that they are similarly placed like eleven persons who were reinstated by raising the suspension. The petitioners, therefore, filed W.P.No.14902 of 2004 and this Court through the order dated 23-8-2004 directed the respondents to consider the representations of the petitioners dated 9-8-2004 for reinstatement on par with other employees and pass appropriate orders within one month from the date of receipt of a copy of the said order, if the petitioners are similarly placed with the other employees. The 1st respondent after the order of this Court simply passed an order on 29-9-2004 rejecting the cases of the petitioners for reinstatement on the ground that the petitioners did not participate in the departmental proceedings like the eleven other persons who were reinstated. Therefore, the petitioners cannot be treated like the eleven other persons.

The respondents are not saying that the petitioners are not similarly placed like other employees in other respects except saying that the eleven persons

participated in the enquiry, but the petitioners did not participate in the enquiry. Therefore, they cannot be treated as the similarly placed persons like the eleven persons who are reinstated. The reasoning given by the 1st respondent in the impugned order is not convincing. When the departmental enquiry was prolonged for years together, it is essential for the concerned authority to review the orders of suspension from time to time. It is now laid down by the Courts that when the charges in the criminal case and the departmental proceedings are one and the same and the witnesses are also same they cannot be allowed to be proceeded simultaneously. Therefore there is every justification for the petitioners to assert their right of getting the departmental proceedings stayed and the 1st respondent is not expected to have any prejudice against the petitioners on the ground that they approached the Court for asserting their legal right, the distinction made by the 1st respondent between the eleven other persons and the petitioners is not proper. Therefore, the order of the 1st respondent dated 29-9-2004 is not sustainable under law since the 1st respondent reinstated eleven other persons who are facing similar charges. The 1st respondent is directed to reinstate the petitioners also by raising the order of suspension against them. The raising of the suspension order will not in any way affect the authority of the respondents to proceed with the departmental enquiry subject to the relevant provisions and the orders of the Court.

The Writ Petition is accordingly allowed.

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(Dr. G.YETHIRAJULU,J)

12th October, 2004.

Tsy/cs

To

1 The Chairman & Managing Director,

A.P. Eastern Power Distribution Company Ltd.,

Opp. Saraswati Park,

Visakhapatnam.

2 The Superintending Engineer, Operation Circle,

A.P. Eastern Power Distribution Company Ltd.,
Opp. Green Park Hotel,

Visakhapatnam.

3 The Divisional Electrical Engineer,

A.P. Eastern Power Distribution Company Ltd.,
Operation Zone-1 Opp. Green Part Hotel,

Visakhapatnam.

4 The Divisional Electrical Engineer,

AP Eastern Power Distribution Company Ltd.,
Operation Zone-II, Kancharapalem,

Visakhapatnam.

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